

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,
Plaintiff,

v.

RAZVAN MARCU,
Defendant.

Case No. 2:14-cv-00159-RFB-CWH

OPINION & ORDER

Plaintiff's Motion for Summary Judgment
(Dkt. No. 57)

I. INTRODUCTION

Before the Court is Plaintiff's Motion for Summary Judgment. (Dkt. No. 57). For the reasons elaborated below, the motion is GRANTED.

II. BACKGROUND

The United States filed a Complaint requesting the Court to revoke Marcu's citizenship, pursuant to 8 U.S.C. § 1451(a), on January 29, 2014. A federal district court has the power to revoke an individual's citizenship for either of two grounds: (1) if naturalization was illegally procured, or (2) if naturalization was procured by concealment or willful misrepresentation of material fact. Marcu filed a Motion to Dismiss, which the Court denied at a hearing on September 24, 2015. The United States filed the present Motion for Summary Judgment on October 20, 2015, (Dkt. No. 57). Defendant filed a Response on November 19, 2015, (Dkt. No. 68), and Plaintiff filed a Reply on December 7, 2015, (Dkt. No. 70).

A. Undisputed Facts

The Court incorporates its findings of fact and discussion of the factual background from its hearing on September 23, 2016.

The Court finds the following facts to be undisputed. Razvan Marcu was born in Romania in 1977. Prior to his naturalization, Marcu was a native and citizen of Romania. Marcu

1 married a U.S. citizen, Catherine Paulette Carlisle, in Romania on January 31, 2004, and on
2 November 25, 2005, he was admitted to the United States as a conditional lawful permanent
3 resident as the spouse of a U.S. citizen.

4 On September 15, 2008, Marcu filed his Application for Naturalization. As part of the
5 application, he was asked to answer whether he had ever committed a crime or offense for which
6 he was not arrested. In response, Marcu checked "No." Marcu was also asked whether he had
7 ever given false or misleading information to any U.S. government official while applying for
8 any immigration benefit or to prevent deportation, exclusion or removal. In response, Marcu
9 checked "No." On September 10, 2008, Marcu signed his immigration form under penalty of
10 perjury. On January 16, 2009, Immigration Officer Aaron Ingelby interviewed Marcu to
11 determine his eligibility for naturalization. Under oath, Marcu affirmed the information in his
12 immigration form under penalty of perjury. Based on this information, his naturalization
13 application was approved on January 16, 2009. On February 20, 2009, Marcu attended a
14 naturalization ceremony in the U.S. District Court for the District of Arizona. Prior to the oath of
15 allegiance, Marcu completed a "Notice of Naturalization Oath Ceremony," on which a question
16 asked whether, since the date of his naturalization interview, he had knowingly committed any
17 crime or offense for which he had not been arrested. In response, Marcu checked "No." On
18 February 20, 2009, Marcu was admitted as a citizen of the United States and received his
19 certificate of naturalization.

20 On July 30, 2012, in the U.S. District Court for the Southern District of New York,
21 Marcu pled guilty to the felony charge of conspiracy to commit wire fraud. 18 U.S.C. § 1343; 18
22 U.S.C. § 1349. The superseding indictment in that case provides the factual basis for the felony,
23 and describes a scheme beginning on or about 2008, up to about 2011, in which Marcu
24 participated to defraud individuals seeking to purchase items on the internet. A purchaser would
25 contact a supposed seller over the Internet, and once the terms of the sale were agreed upon, a
26 fraudulent electronic mail message would be sent to the purchaser asking him or her to wire
27 money to a person or bank account. The money would be withdrawn and no item would ever be
28 sent. The money would then be transmitted to co-conspirators.

1 In his plea colloquy, Marcu admitted to participating in an automobile purchasing wire
 2 fraud conspiracy, as a facilitator between an individual named Tim Harron and co-conspirators in
 3 Romania. He stated in that colloquy that his involvement in the scheme lasted from 2009 to
 4 2011. At a sentencing hearing, Marcu admitted to participating in acts of wire fraud on January
 5 29 and 30, 2009, and February 3 and 4, 2009. The hearing was held subsequent to defendant's
 6 guilty plea, to determine the number of victims of the conspiracy, and whether the defendant
 7 knew or reasonably should have known of that number. (Dkt. No. 59, Pl's Ex. N). At the hearing,
 8 Marcu admitted to receiving wire transfers from Deborah Bruner and Joseph Kubicek, victims of
 9 the conspiracy, to his Washington Mutual bank account to pay for cars they did not receive,
 10 which he then withdrew in cash and distributed to members of the conspiracy. Marcu argued to
 11 the sentencing court that it should only consider his involvement to have begun in early part of
 12 2009 in January and/or February. The sentencing court accepted and relied upon this argument
 13 in imposing sentence. The government has provided evidence of transfers from Bruner and
 14 Kubicek to Marcu's personal bank account, as well as withdrawals, on those dates, that were part
 15 of the conspiracy he pled to. They have also provided evidence of the fake emails from E-Bay
 16 that Bruner and Kubicek received regarding auto purchases.

17 18 **III. LEGAL STANDARD**

19 Summary judgment is appropriate when the pleadings, depositions, answers to
 20 interrogatories, and admissions on file, together with the affidavits, if any, show "that there is no
 21 genuine dispute as to any material fact and the movant is entitled to judgment as a matter of
 22 law." Fed. R. Civ. P. 56(a); accord Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). When
 23 considering the propriety of summary judgment, the court views all facts and draws all
 24 inferences in the light most favorable to the nonmoving party. Johnson v. Poway Unified Sch.
 25 Dist., 658 F.3d 954, 960 (9th Cir. 2011). If the movant has carried its burden, the non-moving
 26 party "must do more than simply show that there is some metaphysical doubt as to the material
 27 facts Where the record taken as a whole could not lead a rational trier of fact to find for the
 28 nonmoving party, there is no genuine issue for trial." Scott v. Harris, 550 U.S. 372, 380 (2007)

(alteration in original) (internal quotation marks omitted). A genuine issue exists, precluding summary judgment, so long as “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986).

IV. ANALYSIS

A. Legal Standard for Denaturalization Proceedings

Under 8 U.S.C. § 1427(a), an applicant for citizenship must demonstrate that he has been a person of good moral character for the requisite statutory period before he files his naturalization application, and continuing until he becomes a naturalized citizen. The Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101(f), bars an applicant from establishing good moral character for a number of enumerated reasons, including if the applicant committed a crime involving moral turpitude (“CIMT”) during the statutory period and has either been convicted of, or admits committing, such offense. Once citizenship has been conferred, “To prevail in a denaturalization proceeding, the government must prove its case by clear, convincing, and unequivocal evidence, and leave no issue in doubt.” Klapprott v. United States, 335 U.S. 601, 612 (1949). “The government bears the burden of such a high degree of proof in denaturalization proceedings because of the ‘importance of the right that is at stake.’” United States v. Arango, 670 F.3d 988, 992-93 (9th Cir. 2012). When a court determines that the government has met its burden of proving that a naturalized citizen obtained his citizenship illegally, or by willful misrepresentation, it must enter a judgment of denaturalization. Fedorenko v. United States, 449 U.S. 490, 517 (1981).

B. Argument 1: Illegal Procurement of Citizenship Under 8 U.S.C. § 1451(a)(1)

1. Lack of “Good Moral Character” Under 8 U.S.C. § 1101(f)’s Catch-All Provision

The United States argues that before Marcu became a citizen, and during the period when he was required to establish good moral character, he was involved in a conspiracy to commit wire fraud, having committed criminal acts related to the conspiracy to which he pled guilty after naturalization. The required statutory period for good moral character for applicants who seek

1 naturalization based on marriage to a U.S. Citizen, as Marcu did, begins three years prior to the
2 filing of the application, until the date of the oath of allegiance to become a U.S. citizen. See 8
3 U.S.C. 1427(a); 8 U.S.C. 1430(a); 8 C.F.R. 316.10(a)(1). Marcu was required to establish that he
4 was, and continued to be, a person of good moral character from September 15, 2005, three years
5 before he filed his application for naturalization, until February 20, 2009, the date he was
6 naturalized. Section 1101(f) of the INA precludes an individual from establishing good moral
7 character if that individual falls within certain enumerated classes, or has committed unlawful
8 acts which adversely reflect on his moral character. 8 U.S.C. § 1101(f)(1)-(9).

9 The government argues that under § 1101(f)'s catch-all provision, Marcu lacked good
10 moral character during the statutory period. The INS' regulations, pursuant to this provision,
11 state that a naturalization applicant "shall be found to lack good moral character if...the
12 applicant...committed unlawful acts that adversely reflect upon the applicant's good moral
13 character, or was convicted or imprisoned for such acts," unless the applicant "establishes
14 extenuating circumstances." 8 C.F.R. 316.10(b)(3)(iii). Although Marcu was not convicted
15 during the statutory period, he maintained at his criminal sentencing that his involvement,
16 withdrawing the wire transfers in cash from his personal bank account, began with two wire
17 transfers in January 2009, and that he participated in the fraudulent scheme until his arrest in
18 2011.

19 In the instant matter, Marcu alleges in a deposition that the January 2009 transactions
20 were not part of the conspiracy, and that they were merely related to a favor for a friend, who
21 wanted to store money in Marcu's bank account. He states that he agreed to receive the
22 transactions into his personal bank account because his friend had credit card debt and wanted to
23 hide his money from the bank and credit card company. Marcu also admits to being compensated
24 for the two transactions in January and February 2009. This most recent representation
25 contradicts the testimony of Marcu's counsel at his earlier sentencing hearing in his criminal
26 matter, and is the first time Marcu is raising an argument that he was unaware at the time of the
27 January 2009 transfers that they were related to the conspiracy. Marcu's counsel unequivocally
28 stated at the criminal sentencing hearing that "the dates are January of 2009 and February of

1 2009 which is, from our point of view, the beginning of this scheme.” (Dkt. No. 59, Pl’s Ex. N.
2 at 242). “[C]riminal defendants are bound by the admissions of fact made by their counsel in
3 their presence.” United States v. Hernandez, 431 F.3d 1212, 1219 (9th Cir. 2005).

4 In January and February of 2009, Marcu received wire transfers from Deborah Bruner
5 and Joseph Kubicek to his Washington Mutual bank account to pay for cars they did not receive.
6 He withdrew the transfers in cash and distributed it to members of the conspiracy, keeping a
7 fraction of the money for himself. The government has provided evidence of transfers from
8 Bruner and Kubicek to Marcu’s personal bank account, as well as withdrawals, on those dates.
9 They have also provided evidence of the fake emails from E-Bay that Bruner and Kubicek
10 received regarding automobile purchases. There is also sworn testimony from Marcu’s co-
11 conspirator, Harron, that the two met in January 2009 to discuss the fraudulent scheme. Other
12 than his deposition statements in the instant case, which contradict his representations during
13 sentencing, under oath, at his criminal case, Marcu has provided no evidence to dispute his
14 knowing entrance into the conspiracy in January 2009. “[C]onclusory, self-serving affidavit[s],
15 lacking detailed facts and any supporting evidence,’ are insufficient to create a genuine issue of
16 material fact.” See Hexcel Corp. v. Ineos Polymers, Inc., 681 F.3d 1055, 1063-64 (9th Cir. 2012)
17 (quoting F.T.C. v. Publ’g Clearing House Inc., 104 F.3d 1168, 1171 (9th Cir. 1997)). Marcu is
18 bound by his attorney’s unequivocal admissions at his sentencing proceeding, (and evidence
19 from multiple other sources) which are sufficient to establish that, in at least January 2009,
20 within the statutory period, Marcu committed unlawful acts which adversely reflect on his moral
21 character. He was, thus, ineligible for naturalization in February 2009.

22 Defendant argues that during his plea colloquy in his criminal case, Judge Patterson of
23 the Southern District of New York expressly asked the U.S. Attorney if Marcu could be deported
24 based on his conviction. In response, the U.S. Attorney stated, “The government understands that
25 the defendant is a U.S. citizen, your Honor.” Marcu contends that he relied upon this
26 representation in entering his guilty plea, and the government should therefore be estopped from
27 pursuing denaturalization. The government argues that it did not make any promises to
28 Defendant regarding potential denaturalization. Two bail memoranda by the government were

1 filed in his criminal case on August 8, 2011, and February 29, 2011, that stated, “While the
 2 defendant became a naturalized U.S. citizen in 2009, his citizenship is now at risk, because in his
 3 paperwork he falsely stated that he had not committed any crimes for which he had not been
 4 arrested since becoming a lawful permanent resident.” Furthermore, it is the Defendant’s
 5 counsel’s duty, not the government’s, to inform him of deportation consequences. See Padilla v.
 6 Kentucky, 559 U.S. 536, 374 (2010). The Court consequently does not credit Marcu’s argument
 7 that the government is estopped from pursuing denaturalization.

8 Therefore, the Court finds that under 8 U.S.C. § 1101(f)’s catch-all provision, Marcu
 9 committed unlawful acts which adversely reflect upon his moral character, and was thus
 10 ineligible for naturalization in February 2009.

11 **2. Lacking “Good Moral Character” Under 8 U.S.C. § 1101(f)(3)’s Crime** 12 **Involving Moral Turpitude Provision**

13 The United States argues that 8 U.S.C. § 1101(f)(3) provides an independent ground for
 14 Marcu’s ineligibility for citizenship in February 2009. Under that provision, individuals who
 15 have committed acts which constitute the essential elements of a Crime Involving Moral
 16 Turpitude (“CMT”), and are either convicted of the CMT or admit commission of the act, are
 17 precluded from establishing good moral character.

18 Although Marcu was not convicted of his felony within the statutory period, pursuant to
 19 the Court’s factual analysis, supra, he admitted to having committed the act of wire fraud in at
 20 least January 2009. Based on his guilty plea, Marcu was convicted of a felony of conspiracy to
 21 commit wire fraud, which constitutes a CMT. The Supreme Court and the Ninth Circuit have
 22 held that crimes involving fraud categorically qualify as CMTs. Jordan v. De George, 341 U.S.
 23 223, 229 (1951); Planes v. Holder, 652 F.3d 991, 997-98 (9th Cir. 2011). Wire fraud requires
 24 “the existence of a scheme to defraud” and “a specific intent to defraud.” See United States v.
 25 Jinian, 725 F.3d 954, 960 (9th Cir. 2013). A conviction for a conspiracy is also a CMT if the
 26 underlying crime is a CMT. Barragan-Lopez v. Mukasey, 508 F.3d 899, 903 (9th Cir. 2007).
 27 Therefore, when Marcu pled guilty to a conspiracy to commit wire fraud, he pled guilty to
 28 having the specific intent to defraud, and to the commission of a CMT. At his sentencing

1 hearing, his attorney explicitly and unequivocally set the date of initiation of Marcu's role in the
 2 conspiracy at January 2009: "[T]he dates are January of 2009 and February of 2009 which is,
 3 from our point of view, the beginning of this scheme." (Pl.'s Ex. N at 242).

4 Therefore, the Court finds that under 8 U.S.C. § 1101(f)(3), Marcu committed acts which
 5 constituted the essential elements of a Crime Involving Moral Turpitude, and was thus ineligible
 6 for naturalization in February 2009.

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 8 **C. Argument 2: Procurement of Citizenship by Willful Misrepresentation or
 Concealment of a Material Fact Under 8 U.S.C. § 1451(a)(2)**

9 The United States further argues that Marcu obtained his naturalization by concealing and
 10 willfully misrepresenting his criminal activity during his naturalization proceedings, and that this
 11 misrepresentation constitutes an independent ground for the Court to revoke Marcu's
 12 naturalization.

13 A misrepresentation or concealment is material to one's naturalization if the
 14 misrepresentation "has a natural tendency to produce the conclusion that the applicant was
 15 qualified" to naturalize. Kungys v. United States, 485 U.S. 759, 770 (1988). A misrepresentation
 16 is considered "willful" if it is "deliberate and voluntary." Espinoza-Espinoza v. Immigration and
 17 Naturalization Servs., 554 F.2d 921, 925 (9th Cir. 1977). Knowledge that the information is
 18 false, as opposed to a specific intent to deceive the decision-maker, is sufficient to establish
 19 willfulness. Forbes v. Immigration and Naturalization Servs., 48 F.3d 439, 442 (9th Cir. 1995).

20 In this case, Marcu has admitted to knowingly committing acts of wire fraud on January
 21 29 and January 30, 2009, prior to submitting his Form N-445 and prior to taking his oath of
 22 allegiance at his naturalization ceremony on February 20, 2009. At this ceremony, Marcu
 23 answered, "no", to the question: "After the date you were first interviewed on your Application
 24 for Naturalization, Form N-400...have you knowingly committed any crime or offense, for
 25 which you have not been arrested?" Therefore, Marcu willfully misrepresented and concealed his
 26 material criminal actions during his naturalization proceedings, and the Court holds, in the
 27 alternative, that Marcu's procurement of citizenship by willful misrepresentation and
 28 concealment is grounds to revoke his naturalization under 8 U.S.C. § 1451(a)(2).

1
2 **V. CONCLUSION**

3 **IT IS THEREFORE ORDERED** that Plaintiff's Motion for Summary Judgment is
4 **GRANTED** [Dkt. No. 57], and the Court enters a judgment of denaturalization against Razvan
5 Marcu.

6 **IT IS FURTHER ORDERED** that the Clerk is instructed to close this case.

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8 **DATED** this 26th day of September, 2016.

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11 **RICHARD F. BOULWARE, II**
12 **UNITED STATES DISTRICT JUDGE**
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